

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

NEIL PHILLIPS

§

v.

§

C.A. NO. C-10-119

§

UNITED STATES OF AMERICA, ET AL

§

OPINION DENYING MOTION FOR APPOINTMENT OF COUNSEL

Petitioner is a federal inmate currently incarcerated at the Federal Correctional Institution in Three Rivers, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2241. (D.E. 1). Pending is petitioner's letter-motion for appointment of counsel on appeal. (D.E. 22).

There is no constitutional right to counsel in federal habeas proceedings. Wright v. West, 505 U.S. 277, 293 (1992) (Constitution "guarantees no right to counsel on habeas"); see also Elizalde v. Dretke, 362 F.3d 323, 329 (5th Cir. 2004) (same); Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992) (same). Rule 8(c) of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues that mandate an evidentiary hearing. Here, there was no evidentiary hearing concerning his petition.

Instead, based on a motion for summary judgment from respondent, a memorandum and recommendation was issued recommending that petitioner's claim be dismissed. (D.E. 14). The Court adopted this recommendation and entered final judgment. (D.E. 17, 18). Petitioner filed a notice of appeal. (D.E. 19).

Nothing in the record demonstrates that there are any issues warranting the appointment of counsel. Moreover, proceedings have been concluded in this Court. Accordingly, letter-motion for appointment of counsel on appeal, (D.E. 22), is DENIED without prejudice.

Petitioner may file a motion for the appointment counsel with the United States Court of Appeals for the Fifth Circuit, which is hearing the appeal of the dismissal of his petition.

ORDERED this 3rd day of November 2010.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE